CASE NO. 83-41

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

LOCAL UNION NO. 141, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; PAUL ROESSLER, KEVIN CAHILL, LEE COSTELLO, TRUSTEES OF SHEET METAL WORKERS LOCAL 141, APPRENTICE TRAINING,

Petitioners,

vs.

DAVID E. SANDMAN, JOHN E. McDONALD, STUART F. YOUNG, TRUSTEES OF SHEET METAL WORKERS LOCAL 141 APPRENTICE TRAINING FUND,

Respondents.

PETITIONERS' REPLY TO BRIEF OF RESPONDENTS IN OPPOSITION TO CERTIORARI

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In their brief opposing certiorari Respondents have attempted to interject the same distortions which led the lower courts to the erroneous conclusions reached below. The distortions urged by the Respondents must be rejected.

I. There has never been any issue in this case relating to violation of affirmative action requirements or regulations.

The Respondents never mentioned affirmative action in their complaint. The idea was gratuitously thrown into the trial court's opinion as dicta. There never was a shred of evidence anywhere in the record of this case that the Petitioners were engaged in a plot to frustrate the affirmative action timetables and goals set forth in the Standards. The only reference anywhere in the record relating to affirmative action appears in the minutes of a meeting mentioned in paragraph 8 of the Esposito Affidavit which is included in the Appendix to Respondents' Brief at page 5a. The minutes reflect that Mr. Roessler, one of the union trustees and a Petitioner herein, suggested that instead of immediately taking thirty-three apprentices into the program from the existing list as proposed by the employer trustees, fifteen apprentices be taken in then (February, 1979) with subsequent retesting in June, 1979 in order to get more blacks and women into the program. Roessler also stated that the union trustees had previously requested that the minority trainees in the Prep-Jet Program be taken in as apprentices.

The insinuation of racial bias injected by the trial court and perpetuated by the Respondents is unfair and prejudicial. Affirmative action never was an issue. The only reference to it in the record shows that the union trustees were supporting the affirmative action goals and not frustrating them.

II. The history of JAC disputes is not relevant.

On pages 3-6 of their brief, Respondents recite a history of disputes which occurred between the trustee groups over the years. None of the history is relevant. The deadlocked resolution which is the subject of this case was not involved in any of the prior disputes. The only dispute involved here is the one which arose over the resolution proposed on March 16, 1981. The issue below and the issue here is whether the deadlock on *that resolution* is a deadlock over "administration" which would entitle the Respondents to appointment of an umpire under 29 USC § 186 (c) (5) (B).

III. The purpose of the resolution is not "to clarify ambiguities" as claimed by Respondents.

There are no ambiguities to clarify. The collective bargaining agreement provides that "the JAC shall grant apprentices on the basis of one apprentice for each four journeymen regularly employed throughout the year" (Petitioners' Appendix, p. 32-a-33a). The Standards as they exist now are the expression of the interpretation to be given to the terms of the collective bargaining agreement regarding apprentice training. The Standards were approved and signed by the collective bargaining parties. Section Sixteen of the Standards provides that nothing contained in the Standards shall be interpreted as being contrary to the present or subsequent bargaining agreements (Petitioner's Appendix, p.77a). The Standards clearly interpret "journeymen" to mean members of Local 141. Likewise, the term "regularly employed throughout the year" in the collective bargaining agreement has been interpreted in the Standards to mean "on the employer's payroll." As pointed out by the Petitioners in their peti-

tion, it is clear from the Standards that the term "year" means the present year, not the past year.

By approving and signing the Standards, by specifically recognizing them *as approved* as part of the collective bargaining agreement, and by specifically providing in the Standards that they shall be deemed consistent with future collective bargaining agreements, the collective bargaining parties have already clarified what the collective bargaining agreement means. It means what is stated in the Standards.

The Respondents completely ignore the structure and effect of the two instruments. There is no ambiguity. The difference in language between the collective bargaining agreement and the Standards does not create ambiguity. They are not contradictory; the Standards as they exist explain the meaning of the collective bargaining agreement.

Since the collective bargaining parties have already said that "journeymen" means "members of Local 141," the trustees do not have the authority to say, "no, it doesn't."

IV. The Standards are not part of the Trust Agreement.

The Respondents refer to the Standards as "Standards of the Trust." They ignore the fact that the Standards are not part of nor incorporated in the Trust Agreement. They are, on the other hand, specifically recognized as part of the collective bargaining agreement (Article XI, Section 1, Petitioners' Appendix, p.32a). This is a crucial fact which must not be ignored or distorted. The Trust Agreement provides in Article XIII, Section 2, (Petitioners' Appendix, p.61a) that the trustees have power to interpret, apply and construe the provisions of the Trust Agreement and that any such interpretation, construction, or application adopted by the trustees shall be

binding on the union, employer association, the employers and employees. The full binding power of the trustees is therefore limited to the terms of the Trust Agreement. The terms involved in the resolution are *not in* the Trust Agreement. They are in the collective bargaining agreement and the Standards. The Standards are part of the collective bargaining agreement. Interpretation of the collective bargaining agreement is subject to the grievance procedure of the collective bargaining agreement.

V. This court should consider and decide the meaning of "administration" as contained in 29 USC § 186 (c)(5)(B).

On page 18 of their brief, Respondents argue that the question of the meaning of "administration" is not properly before the court. They say that the question before the lower courts was whether the resolution fit within the contractual language of the Trust Agreement, "affairs of this trust," and not whether the resolution fit within the statutory language, "administration." Respondents' argument is without merit.

The trial judge believed that his power to appoint an umpire was derived from 29 USC § 186 (c) (5) (B), (Petitioners' Appendix, p.9a). Under the statute, a court must find that there is a deadlock on "administration" in order to appoint an umpire. The parties cannot restrict the statutory language by agreement. See *Hawkins* v. *Bennett,* 704 F.2d 1157, 1160 (9th Cir., 1983).

Whatever language the parties use must be synonymous with "administration." The parties cannot expand the jurisdiction of the trial court by using language broader than "administration." The trustees cannot manipulate contractual language to confer on themselves and hence

upon an umpire the power to change negotiated terms agreed upon by the bargaining parties. In the final analysis, all trustees can do is *administer* the negotiated agreements. When trustees venture into the areas of negotiation reserved to the bargaining parties, they run afoul of the principle expressed in *NLRB* v. *Amax Coal Co., et al,* 453 U.S. 322 (1981). The term "administration" is the key to this case. It is inextricably enmeshed in every argument made below. The court should use this case as an opportunity to define "administration." Although the Second, Sixth, Eighth, Ninth and Tenth Circuits have treated the question, there is no real concensus and no clear statement as to what the term means vis-a-vis *Amax*.

VI. CONCLUSION

The arguments raised by the Respondents in opposition to certiorari are meritless. Petitioners submit that this case raises important questions that need to be answered. It is the first case reaching this Court known to Petitioners that deals with "administration" in terms of an apprentice training trust. Petitioners respectfully submit that certiorari be granted.

Respectfully submitted,

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